

## dispute resolution - legal changes published in May 2018

**Decision of the High Court of Cassation and Justice no. 4 of March 5, 2018 regarding the examination of the complaint made by the Board of the Cluj Court of Appeals regarding "the interpretation and the unitary application of the provisions of art. 8 par. (1), related to those of art. 1 par. (1) let. b) of the Government Ordinance no. 15/2002 on the application of the usage fee and the passage fee on the national road network in Romania, approved with amendments and supplements by Law no. 424/2002, with subsequent amendments and supplements, in order to establish the active subject of the misdemeanor consisting in the act of driving without a valid vignette, if it is proved with a document registered with certified date at a public institution that the vehicle was sold prior to the date of finding the misdemeanor" was published in the Official Gazette of Romania, Part I, no. 388 of May 7, 2018 and is applicable from the same date.** The HCCJ admitted the appeal in the interest of the law formulated by the Board of the Cluj Court of Appeals and consequently found that, in the interpretation and unitary application of the provisions of art. 8 par. (1), related to art. 7 and art. 1 par. (1) let. b) of the Government Ordinance no. 15/2002 on the application of the usage fee and the passage fee on the national road network in Romania, approved with amendments and supplements by Law no. 424/2002, with subsequent amendments and supplements, in the case of the transfer of ownership of the vehicle, the former owner loses the quality of user and the active subject of the misdemeanor consisting in the act of driving without a valid vignette, and that the proof of the transfer of the right of ownership is made according to common law.

**Decision of the High Court of Cassation and Justice no. 12 of February 22, 2018 regarding the examination of the appeal filed by the Iasi Court of Appeals - Administrative and Tax Litigation Section in File no. 2.711/99/2016, in order to issue a prior decision for the resolution of a matter of law, was published in the Official Gazette of Romania, Part I, no. 418 of May 16, 2018 and is applicable from the same date.** The HCCJ has admitted the referral on issuing a preliminary ruling filed by the Iasi Court of Appeals - Administrative and Tax Litigation Section in File no. 2.711/99/2016 and, consequently, found that in the interpretation of the provisions of art. 24 par. (4) of the Administrative Litigation Law no. 554/2004, as subsequently amended and supplemented: (i) the period within which the creditor may request the payment of the sum owed to them by the debtor as penalty is the limitation period of the mandatory enforcement, 3 years, regulated by art. 706 of the Civil Procedure Code, which runs from the date of performance of the obligation or, in case of non-performance, from the expiry of the three-month period, within which the debtor was able to fulfill the obligation in kind; (ii) the penalties set in percentage per day of delay shall be calculated from the time indicated in the resolution issued during the procedure regulated by art. 24 par. (3) of the Law no. 554/2004, as subsequently amended and supplemented, until the fulfillment of the obligation, but no later than the expiration of the three-month period within which the debtor was able to fulfill the obligation in kind, in case of non-performance; (iii) under the procedure regulated by art. 24 par. (4) of the Law no. 554/2004, as subsequently amended and supplemented, the Court may

determine the value of the object of the obligation to which late payment penalties, set in percentage per day of delay, shall apply, on the assumption that the Court mentioned in art. 24 par. (3) of the same law has not established this.

**Decision of the High Court of Cassation and Justice no. 3 of February 19, 2018 on the examination of the complaint made by the Board of the Bacau Court of Appeals regarding the interpretation of the provisions of art. 3.1.1 let. c) of the Legal Metrology Norm NML 021-05 "Vehicle Speed Measuring Devices (Velocimeters)", approved by the Order of the General Manager of the Romanian Bureau of Legal Metrology no. 301/2005, as subsequently amended and supplemented, was published in the Official Gazette of Romania, Part I, no. 423 of May 17, 2018 and is applicable from the same date.**

The HCCJ has examined the appeal filed by the Board of the Bacau Court of Appeals regarding the interpretation of the provisions of art. 3.1.1 let. c) of the Legal Metrology Norm NML 021-05 "Vehicle Speed Measuring Devices (Velocimeters)", approved by the Order of the General Manager of the Romanian Bureau of Legal Metrology no. 301/2005, in the sense that they apply at the moment of finding the misdemeanor, as a result of speed measurement by the radar operator/Court of Law, in the course of solving the misdemeanor complaint, or apply only at the time of verification and approval of the radar device by the legal metrology service. The High Court noted that, in view of the provisions of art. 49 from EGO no. 195/2002 on the circulation on public roads, which regulate the legal speed limits, as well as the provisions of art. 108 of the same act regulating the speeding misdemeanors, the limit upon which the sanction is applied, is the one established, according to the law, with technically approved and metrologically verified technical means, on the presumption that they express the real speed of the vehicle caught speeding. Since the misdemeanor was found by technically approved and metrologically verified technical means, according to art. 6 point 20 of EGO no. 195/2002, the margin of error can not be applied, the purpose of the norm subjected to interpretation is the observance of the metrological and technical requirements for putting into operation and using the Velocimeters. Consequently, the High Court has admitted the appeal in the interest of the law by establishing that in the interpretation and application of the provisions of art. 3.1.1 of the Legal Metrology Norm NML 021-05 "Vehicle Speed Measuring Devices (Velocimeters)", approved by the Order of the General Manager of the Romanian Bureau of Legal Metrology no. 301/2005, the maximum tolerable errors for speed measurement are metrological requirements applicable only in the procedure for certification of a Velocimeter by the entities referred to in art. 4 of the aforementioned order, i.e. only at the time of checking and approving the device.

**Decision of the High Court of Cassation and Justice no. 11 of April 16, 2018 on the examination of the appeal in the interest of the law submitted by the Board of the Brasov Court of Appeals regarding the unitary interpretation and application of art. 784 par. (1), second thesis of the Civil Procedure Code was published in the Official Gazette of Romania, Part I, no. 430 of May 21, 2018 and is applicable from the same date.**

The HCCJ has been consulted for a decision to ensure the unitary interpretation and application of art. 784 par. (1), second thesis of the Civil Procedure Code regarding the extent of the effects of the stay on enforcement by garnishment of bank accounts, or in case of seizing of all future amounts that feed the debtor's account opened with the third party garnishee, whether or not they existed at the date of the stay, or they do not fall under the measure of seizing of future income, subsequent to the stay, which did not exist in the garnished debtor's account on the date of the establishment of the garnishment. The HCCJ

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has established that, in the interpretation and unitary application of the provisions of art. 784 par. (1), second thesis of the Civil Procedure Code, the stay on enforcement by bank account garnishment removes the obligation of the third party to also seize the proceeds going into the debtor's account after the stay.